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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:)
)
Insurall Casualty Group, Inc.)
)
)
Alleged Debtor.)
_____)

Bankruptcy No. 03-05275-W
Chapter 7

FILED

at ___ O'clock & ___ min. ___ M

MAY 07 2003

BRENDA K. ARGOE, CLERK
United States Bankruptcy Court
Columbia, South Carolina (33)

**ORDER GRANTING MOTION TO APPOINT INTERIM
TRUSTEE PURSUANT TO 11 U.S.C. § 303(g)**

This matter came before the court for a hearing on May 6, 2003 at 10:30 a.m. on the **Motion and Memorandum in Support to Appoint Interim Trustee Pursuant to 11 U.S.C. § 303(g) or Order Pursuant to 11 U.S.C. § 303(f)** ("Interim Trustee Motion"). Business Carolina, Inc., formerly known as Carolina Capital Investment Corporation, (hereinafter "BCI"), along with two (2) others creditors of the Alleged Debtor, filed an involuntary bankruptcy petition against the Alleged Debtor under Chapter 7 of the U.S. Bankruptcy Code on May 1, 2003. The Interim Trustee Motion was also filed by BCI on May 1, 2003, concurrently with a **Motion and Memorandum for Emergency Hearing and Certification of Necessity for Emergency Hearing** seeking an emergency hearing on the Interim Trustee Motion.

On May 1, 2003, this Court issued an **Order and Notice of Emergency Hearing** setting the hearing for May 6, 2003 at 10:30 a.m. ("Emergency Order"). The Emergency Order provided that counsel for BCI "shall serve a copy of the motion (if not previously served) and this Order by hand-delivery, telefax, electronic mail (receipt confirmed) or overnight delivery on the alleged debtor and its counsel, if known, the petitioning creditors and their counsel, the office of the United States Trustee, and any other

essential party by 7:00 p.m. on Thursday, May 1, 2003.” The Emergency Order further provided that any objection, return or response to the Motion shall be served on counsel for the movant, BCI, and filed in the office of the Clerk of Court on or before the hearing. BCI filed three (3) certificates of service with respect to the Interim Trustee Motion and the Emergency Order. The first, dated and filed with the court on May 1, 2003 at 3:40 p.m., provided for service by mail of the Involuntary Petition and Interim Trustee Motion. The second, dated May 1, 2003 and filed May 2, 2003 at 3:39 p.m., provided for service of the Emergency Order in accordance with the Emergency Order. The third, dated and filed May 2, 2003 at 3:37 p.m., provided for service again of the entire package of the Involuntary Petition, Interim Motion and Emergency Order by hand-delivery or fax.

Counsel for BCI and the other petitioning creditors appeared at the hearing. Charles Harmon testified on behalf of BCI. Counsel for R.L Bryan and Structioneers, other creditors of the Alleged Debtor, also appeared at the hearing. Counsel for the Alleged Debtor appeared, but no representative of the Alleged Debtor was present at the hearing. Prior to the hearing, counsel for the Alleged Debtor filed a Limited Objection of Putative Debtor to Motion to Appoint Interim Trustee Pursuant to 11 U.S.C. § 303(g) or Order Pursuant to 11 U.S.C. § 303(g) (“Limited Objection”), alleging the service of the Trustee Motion was defective but not alleging a substantive objection to the Interim Trustee Motion. The following constitutes the court’s findings of facts and conclusions of law. To the extent one is deemed to be another, they are incorporated into each other.

FINDINGS OF FACT

1. On May 1, 2003, BCI and two other petitioning creditors filed an involuntary bankruptcy petition seeking to adjudicate the Alleged Debtor as a bankruptcy debtor in accordance with 11 U.S.C. § 303(b)(1) and pursuant to Chapter 7 of the United States Bankruptcy Code.

2. The Alleged Debtor's business was to market and sell insurance policies while acting as either an insurance broker, who sold policies on behalf of other insurance companies, or as the managing general agent for a specific insurance company; however, the Alleged Debtor is not an operating business, having ceased business operations on or about February 14, 2003.

3. BCI asserts it is a secured creditor of the Alleged Debtor, owed in excess of \$5 million, with an asserted perfected lien on substantially all of the Alleged Debtor's assets, real and personal.

4. Despite cessation of operations, the Alleged Debtor still possesses a number of assets, including accounts, files, equipment, real property, and their proceeds and such personal property and accounts are subject to rapid sale or other disposition.

5. Because of the cessation of operations by the Alleged Debtor, BCI has had to force place insurance on the equipment located in Hemingway and Columbia and on the real property in Hemingway.

6. BCI has also had to provide limited security for the collateral and advance costs associated with maintaining electricity and power at the Hemingway call center in order to preserve the value of the computer equipment at the call center.

7. The Alleged Debtor has failed to provide financial reports and other accounting information to BCI, despite an obligation to do so in the loan agreement with BCI and BCI's continuing requests for such documentation and information.

8. On or about April 10, 2003, the Alleged Debtor sold the right to receive certain commissions, files and accounts to Adams/Eaddy Insurance Company ("Adams/Eaddy") for an initial down payment of \$65,000 and future payments as set forth in an Asset Purchase Agreement between the parties.

9. The sale of accounts to Adams/Eaddy was consummated despite objections, both verbal and in writing, from BCI prior to the sale. BCI informed the Alleged Debtor and Adams/Eaddy and their respective counsel, that BCI asserted a perfected security interest in the assets to be sold, questioned the adequacy of the purchase price and objected to the sale. BCI also demanded that any sale proceeds be paid to BCI if the accounts were sold over its objections.

10. After the sale, Adams/Eaddy issued a \$65,000 check payable to Insurall. Insurall refused to remit the \$65,000 payment to BCI or its counsel and provided no information as to the whereabouts of the \$65,000.

11. In addition to the sale to Adams/Eaddy, BCI presented evidence at the hearing that, in connection with the advancement of some of the initial loan proceeds to Insurall, checks that were issued as jointly payable to Insurall and its vendors were apparently defaced, endorsed only by Insurall and deposited in an Insurall account.

The Alleged Debtor provided no information as to how those proceeds were utilized; however, counsel for two (2) of the creditors indicated their clients had not received said checks and were still owed money by the Alleged Debtor.

Conclusions of Law

1. 11 U.S.C. § 303(g) specifically states:

“at any time after the commencement of an involuntary case under Chapter 7 of this title but before an order for relief in the case, the court, on the request of party in interest, after notice to the debtor and a hearing, and if necessary to preserve the property of the estate or to prevent loss to the estate, may order the United States Trustee to appoint an interim trustee under Section 701 of this title to take possession of the property of the estate and to operate any business of the debtor”
2. The evidence reflects that the Alleged Debtor has engaged in the following conduct which justifies appointment of an Interim Trustee: (a) failure to insure BCI's collateral; (b) failure to pay costs associated with utilities required to preserve the value of significant assets; (c) failure to maintain security at its Hemingway call center; (d) disposition of collateral over the objections of BCI, without USDA approval and without payment or accounting to BCI for these funds; or (e) failure to provide financial reports and accountings to BCI, despite demand. There is further evidence the Alleged Debtor may have defaced checks made jointly payable to the Alleged Debtor and the Alleged Debtor's vendors in order to avoid paying the vendors and keep those funds for itself.
3. No officer or shareholder of the Debtor appeared to contest these allegations or provide any explanation for these events, despite having received proper notice of the hearing and an opportunity to be heard.
4. Since the Alleged Debtor is not an operating business, the appointment of a trustee will not damage the Debtor's business relationships or otherwise impose a

hardship to the Debtor, but will ensure assets of the Debtor are not dissipated before adjudication of the involuntary petition as contemplated by Section 303(g).

In re: R.S. Grist Company, 16 B.R. 872 (S.D. Fl. 1982); In re: James Plaza Joint Venture, 62 B.R. 959 (S.D. Tex. 1986); In re: Professional Accounts Referral Services, Inc., 142 B.R. 424 (D. Col. 1992).

5. The Court finds BCI has met its burden of proof and interim trustee is necessary under 11 U.S.C. § 303(g) to preserve property of the estate and to prevent loss to the estate. The Debtor failed to offer any explanation for its acts. The Debtor failed to file any substantive objection to the motion or to appear at the hearing and offer any evidence in defense of its actions, other than counsel's Limited Objection to service.

6. The Court finds BCI complied with the Emergency Order and provided suitable notice to all parties as required by the Order and Notice of Emergency Hearing. The Court additionally finds that a combination of factors also provided the Alleged Debtor with adequate notice of the Interim Trustee Motion and opportunity to voice a substantive objection to the relief requested. The evidence indicates that, prior to May 1, 2003, counsel for the Movant and Alleged Debtor had ongoing workout discussions in which the prospect of an involuntary filing by Movant was presented. Furthermore, counsel for the Alleged Debtor was not in his office on May 1, 2003 due to other matters and therefore was unavailable to address the Interim Motion until May 2, 2003, the date on which he actually received a copy of the Interim Motion. Finally, despite a further opportunity at the hearing, counsel for the Alleged Debtor declined to even verbally offer a substantive objection to the Interim Motion other than the Limited Objection. Nevertheless, he was allowed to participate in the hearing and objected to certain

testimony and other evidence offered by Movant. For all of these reasons, the Court overrules the Alleged Debtor's Limited Objection in this matter.

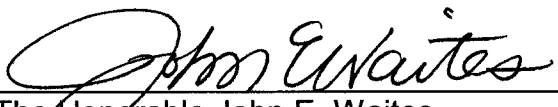
7. Bankruptcy Rule of Procedure 2001(b) provides an interim trustee may not be appointed unless the movant furnishes a bonded amount approved by the court. The court has considered the need for a bond in this case and, based primarily on the fact that the Alleged Debtor is not an operating business, finds that a bond in the amount of \$0.00 is appropriate.

Therefore, for the reasons set forth in the Conclusions of Law and based on the Findings of Facts and other information set forth herein,

IT IS **ORDERED** that the Alleged Debtor's Limited Objection is overruled, the Interim Trustee Motion is granted, the United States Trustee shall appoint an interim trustee who shall serve as trustee for the Alleged Debtor pending further Order of the Court.

IT IS FURTHER **ORDERED** that a hearing shall be held on **May 20, 2003 at 10:30 at the J. Bratton Davis United States Bankruptcy Court, 1100 Laurel Street, Columbia, South Carolina**, at which time the Interim Trustee shall appear and report to the Court and parties as to the status of the Debtor's assets, and whether the Debtor is cooperating with the Interim Trustee.

AND IT IS SO ORDERED.


The Honorable John E. Waites
United States Bankruptcy Court Judge